

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	Criminal No. 01-455-A
	)	
ZACARIAS MOUSSAOUI,	)	
Defendant	)	

GOVERNMENT’S RESPONSE TO STANDBY COUNSEL’S MEMORANDUM  
IN SUPPORT OF DEFENDANT’S MOTION FOR COPY OF SUBSTITUTION

The United States respectfully opposes defendant’s *pro se* Motion for Copy of Substitution, which the Court has previously twice denied as moot (see docket numbers 1043 and 1052), and which standby counsel again seek to re-litigate in the pleading filed as their Memorandum in Support of Defendant’s Motion for Copy of Substitution.

Standby Counsel’s attempt to raise for the third time defendant’s request for a copy of the Government’s Proposed Substitutions filed in docket number 1038 must be denied for multiple reasons. First, the Court lacks jurisdiction to grant the motion at this time because the Government has filed a notice of appeal. “The filing of a notice of appeal is an event of jurisdictional significance -- it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.” Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 58 (1982); United States v. Christy, 3 F.3d 765, 767 (4th Cir. 1993) (same, quoting Griggs). As standby counsel note in their pleading, the very same issue for which the substitutions apply is currently on appeal. Therefore, the notice of appeal has divested the Court of jurisdiction to address this motion.

Second, standby counsel -- and not the defendant *pro se* -- are counsel of record for the

appeal. Therefore, there is no need for the *pro se* defendant to have access to this classified information. Standby counsel can more than adequately address any issue involving the substitutions without defendant, who has repeatedly stated that he wants no contact with standby counsel.

Third, as noted in our pleading filed with the substitutions (docket number 1038), the Government will not authorize a disclosure of this classified information to the defendant. As the Fourth Circuit has noted, the decision to authorize the disclosure of classified information rests with the Government and is not subject to review by the courts. See United States v. Moussaoui, 65 Fed. Appx. 881, 887 n. 5, 2003 WL 21076836 at \*\*3 (4<sup>th</sup> Cir. May 13, 2003). Therefore, the motion should fail for this reason as well.

Respectfully submitted,

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United States Attorney

By: /s/ \_\_\_\_\_  
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Kenneth M. Karas  
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Certificate of Service

I certify that on the \_\_\_\_ day of October, 2003, a copy of the foregoing Government's Response was provided to defendant Zacarias Moussaoui through the U.S. Marshals Service and faxed and mailed to the following::

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